



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant
MR LUKE FORD

AND

Respondent
SSE SERVICES LTD

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT: CARDIFF ON: 1ST MAY 2019

EMPLOYMENT JUDGE MR P CADNEY

MEMBERS:

APPEARANCES:-

FOR THE CLAIMANT:-

FOR THE RESPONDENT:- WRITTEN SUBMISSIONS

JUDGMENT

The judgment of the tribunal is that:-

1. The claimant is ordered to pay the respondent's costs in the sum of £19,108.91.

Reasons

1. On 11th December 2018 the tribunal issued its Judgment dismissing the claimant's claims. On 7th January 2019 the respondent submitted an application for its costs on the basis that the claim itself was misconceived, and also for the claimant's unreasonable behaviour. The application set out the full basis of the application together with the respondents Schedule of Costs.
2. Since that time there has been substantial email correspondence. All of the specific direction referred to below and the extensions of time given to the claimant were directions given by me and communicated by email by the tribunal.

3. On 7th January the tribunal emailed the parties to ask if they were happy for the application to be determined on the papers or sought an oral hearing. On 8th January the respondent replied that it was content for the matter to be decided by reference to the written submissions. On the same day the claimant emailed asking whether a telephone call could be arranged for the end of the month. The ET replied setting out sources of free advice and asking the claimant to comply with the existing direction. No further comments were received from the claimant and on 22nd January the respondent applied for the issue to be decided given that no response had been received from the claimant.
4. The claimant's comments on this further application were requested within seven days on 2nd February. No reply was received and on 15th February the tribunal emailed the claimant saying "*Unless the claimant responds to the Employment Tribunal's email correspondence within 7 days the EJ will assume that he does not object to the respondent's application for costs.* On the 20th February the claimant replied (using a different email address) saying he had blocked his previous email address and asking for advice on the date for an appeal. However he made no reference to the costs application. That same day the claimant was reminded of the time for appealing and requested to reply to the tribunal's earlier email no later than 27th February 2019.
5. On the same day the claimant emailed in reply saying that he would be away from the following morning until 1st March 2019 and once again asking for the tribunal to supply him with a specific date by which any appeal should be lodged. In response the tribunal emailed saying that the time for "*lodging any objection to the respondent's application for costs is extended until 8th March 2019*".
6. On the 27th March 2019 the claimant once again emailed asking for advice on the appeal process but made no mention of the respondent's application for costs. In response on 1st April 2019 the tribunal wrote:

*The claimant has been given a number of opportunities to comment on the respondent's application for costs. He has contacted the tribunal again on the 27th March 2019 but made no mention of the costs application. If he does not answer the following questions within **7 days** the Employment Judge will decide the application on the basis of the respondent's written submissions:*

- 1) *Does the claimant oppose the application? If he does he should set out briefly why.*
 - 2) *Does he want the application decided on the basis of written submissions (the respondent's preference) or is he asking for an oral hearing?*
 - 3) *If his preference is for written submissions how long will he need to supply them?*
7. On 5th April 2019 the claimant emailed to say that he would "*..put some words together over the weekend and send this to you on Monday*" There has been no communication since then.

- 8. In effect, despite being given many opportunities the claimant has not sought to comment on or object to the respondent’s application since first being given the opportunity to do so in January. In those circumstances it can only be assumed that he does not object. On any analysis he has had a reasonable opportunity to respond within the meaning of Rule 77 of the ET Rules.

- 9. In any event as is set out in the Judgment the tribunal had the gravest doubts as to the veracity and reliability of the claimant’s evidence and at paragraph 18 specifically found that we were not satisfied that the true reason for dismissal was anything other than the impending disciplinary hearing. That was based on the evidence, as is set out in the decision, which the claimant had given which in many cases (for example the disputed contents of the Occupational Health report (para 11)) was demonstrably untrue. It follows that in the absence of any objection from the claimant the threshold for making an order for costs has clearly been passed, since in the view of the tribunal the claimant had not been given truthful evidence about a critical component of a claim for constructive dismissal, the reason for the resignation itself. (See HCA International Ltd v May –Bheemul EAT 0477/10 and Arrowsmith v Nottingham Trent University 2012 ICR 159 CA) . In those circumstances it is not necessary to consider the other aspects of the respondent’s application as the threshold has been passed and the claimant has not sought to provide any argument as to why the discretion should not be exercised in the respondent’s favour. Similarly and for the same reason there is no information as to the claimant’s means.

**Judgment entered into Register
And copies sent to the parties on**

.....3 May 2019.....

**.....
for Secretary of the Tribunals**

EMPLOYMENT JUDGE Cadney

Dated: 1 May 19